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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 508

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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September 15, 1964.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Locomotive Engineers, and Order of Railway Conductors and Brakemen, petitioners, pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on June 22, 1964.

OPINION BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit, printed in Appendix A hereto, *infra*, pp. 19-26, is reported in 332 F. 2d 850. The judgment of that Court is printed following its opinion, *infra*, p. 27.

The Findings of Fact, Conclusions of Law, and Final Decree granting permanent injunction (pp. 232-236 of defendants-appellants' Appendix in the Court of Appeals, filed herewith and hereinafter referred to as DA) are not officially reported. They are printed in Appendix B hereto, *infra*, pp. 28-32.

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered June 22, 1964 (Appendix A hereto, *infra*, p. 27).

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1). Federal jurisdiction in the court of first instance was based on the Judicial Code (28 U. S. C. §§ 1331 and 1337), the Railway Labor Act (45 U. S. C. § 151, *et seq.*), and the Interstate Commerce Act (49 U. S. C. § 1, *et seq.*).

QUESTIONS PRESENTED.

This case presents important questions concerning the administration of the Railway Labor Act in the settlement of railway labor disputes which may be stated as follows:

1. When railroad management announces intended changes in working conditions which are not covered by rules or other contract provisions in the existing schedule agreement, and the affected employees seek through the union designated to represent them to negotiate an agreement to cover the new working conditions, must the union serve upon the railroad a notice designated a Section 6 notice under the Railway Labor Act before the management is obliged to engage in collective bargaining in the manner contemplated by Section 2, First, of the Railway Labor Act?

2. When working conditions are not covered by the

rules and contract provisions contained in the existing schedule agreement and the union designated to represent a craft of railway employees desires to negotiate a new rule or contract provision pertaining to such conditions, will an informal notice from the union to railroad management, either oral or written, which informs management of the desire to negotiate and the subject matter to be negotiated about, suffice to require management to enter into collective bargaining negotiations in the manner contemplated by Section 2, First, of the Railway Labor Act?

3. When railroad management has announced intended changes in working conditions which are not covered by rules or other contract provisions in the existing schedule agreement, and the union representing the affected employees has engaged in negotiations with the representatives of management for the purpose of negotiating an agreement to cover the new situation, may the representatives of management lawfully refuse to reduce the terms of the new agreement to writing on the grounds that the union did not initiate the negotiations by serving upon management a written notice, designated a Section 6 notice under the Railway Labor Act, of the union's desire to negotiate an agreement covering the new working conditions?

4. When railroad management has announced intended changes in working conditions which are not covered by rules or other contract provisions in the existing schedule agreement, and the affected employees seek through the union designated to represent them to make an agreement with managment to cover the new working conditions but the employees are unable to do so, does the fact the union had not served on the railroad a notice designated as a Section 6 notice under the Railway Labor Act make the described dispute a "minor" dispute and give the National Railroad Adjustment Board jurisdiction over it?

STATUTE INVOLVED.

The statutory provisions involved are Railway Labor Act Section 2, First; Section 2, Second; Section 2, Seventh; Section 3, First (i); Section 6 (45 U. S. C. §§ 152, First; 152, Second; 152, Seventh; 153, First (i); and 156) printed in Appendix C, *infra*, pp. 33-34.

STATEMENT.

This litigation stems from a labor dispute, the inception of which was simple in its nature and the issues of which are substantially routine in character (DA pp. 118-121). A roundhouse was maintained by the Illinois Central Railroad Company, the carrier, at the Sixth Street tie-up point of the carrier at its East St. Louis, Illinois terminal. Here crews at the end of their tours of duty left locomotives for servicing (DA pp. 68, 70, 86). For a period of years prior to July 25, 1963, some 75 employees reported for work and were relieved of duty at the old Sixth Street tie-up point (DA p. 90). This group included, on an average day, about 17 crewmen who were required to lay-over at the Terminal while waiting to make the return trip to their home terminal at Clinton, Illinois. The total number of employees working at the East St. Louis Terminal averaged about 170 persons each day (DA p. 90).

The lay-over periods of the away-from-home crews varied from 3 to 20 hours. The average lay-over period was between 8 and 12 hours (DA pp. 71, 147). For years it was the practice of the away-from-home crews, when relieved of their duties and after washing up at the Sixth Street yard facilities, to catch an East St. Louis bus about one block from the tie-up point and go to the business district of East St. Louis where they made their own arrangements for eating and sleeping facilities and for other services required by them (DA p. 133). The carrier did

not provide the employees with money to pay their expenses during lay-over, unless the lay-over exceeded 16 hours (DA p. 71).

By 1955, the engine and mechanical facilities at the East St. Louis Terminal had become obsolete, due primarily to the advent of the Diesel locomotive (DA pp. 85, 154, 102). Management accordingly resolved to rehabilitate the yard facilities and mechanical facilities, particularly at the Hump Yard where the carrier's primary yard operations had been carried on (DA pp. 71-72).

The Illinois Central also decided that after the modernization of the Hump Yard had been completed, worthwhile economies could be effected by moving the tie-up point the three miles out to the Hump Yard and requiring the crews and other employees to report for work and be relieved of duty at the Hump Yard (DA pp. 95-96, 154). Since road crews are paid on the basis of the miles run, pay for six miles for each tour of duty would be cut from the wages paid road crews that had been tying up at Sixth Street. This represented a saving of about $1.32 per day for the carrier for each member of the crews that had been tying up at Sixth Street (DA pp. 86-88). The servicing of the locomotives could also be performed in the Hump Yard and this would avoid the expense of transporting fuel and supplies for the locomotives to the Sixth Street roundhouse (DA pp. 89, 93).

But management recognized that requiring the employees to tie up at the Hump Yard would create problems for the employees, especially the away-from-home crews. Washing and locker facilities would be needed for all employees working in the yard. Also, the closest available public transportation for employees going from the Hump Yard to the business district of East St. Louis for food and shelter would require the employees to walk about one mile

to reach a bus, at all hours of the day and night (DA pp. 80, 92), and through a slum residential area which is unsafe for the employees (DA pp. 99-100). The cost of taxi service to and from the business district would involve excessive expenses for the employees. Illinois Central management decided to solve the problem by constructing a couple of wooden buildings and by installing several trailers in the Hump Yard as facilities for the employees. Beds and meals would be made available at these places, for a price to be set by the carrier (DA pp. 79-80).

On March 1, 1962, Illinois Central's Superintendent H. R. Koonce called in the defendant Brotherhoods' local chairmen, as the representatives, for the purposes of the Railway Labor Act, of the firemen's, engineers', and conductors' crafts. The Superintendent explained the carrier's plan to transfer the tie-up point from Sixth Street to the Hump Yard (DA p. 73). On December 7, 1962, the chairmen wrote to Superintendent Koonce suggesting that certain facilities should be provided, and that "proper negotiations" should be had between the chairmen and management before the tie-up point was moved to the Hump Yard (DA pp. 147-148). On December 19, 1962, Superintendent Koonce furnished a copy of this letter to Earl Oliver, the carrier's Manager of Personnel, and asked for instructions (DA p. 224).

On January 9, 1963, Earl Oliver, Manager of Personnel, without the knowledge of the employee representatives wrote Superintendent Koonce with respect to the request of the local chairmen, in part as follows:

> "Under no circumstances should we ask their agreement, for our entire object has been to avoid having to make an agreement. In other words, whereas the local chairmen talk about having 'proper negotiations' before the move is made from 6th Street to the hump,

> we should not negotiate: we should inform, and you might well give the information to the four local chairmen at an on-the-ground meeting at East St. Louis rather than in correspondence." (DA p. 227.)

Superintendent Koonce acknowledged the letter of December 7, 1962, written by the local chairmen (DA p. 149), but no conferences were arranged.

On May 23, 1963, Superintendent Koonce wrote the local chairmen that "adequate facilities are being constructed at the new location" and that it was expected that they would be completed prior to the moving date sometime in early July (DA p. 150). On May 24, 1963, the local chairmen repeated their earlier requests concerning facilities to be furnished to the employees (DA p. 151), but time was running out and a few days later the problem was transferred by the local chairmen to the Brotherhoods' general chairmen on the Illinois Central System for handling.

On May 29, 1963, the general chairmen addressed a communication to the Illinois Central's Manager of Personnel in which they stated that Superintendent Koonce had not informed the local chairmen regarding the facilities and provisions the carrier intended to provide the employees at the Hump Yard and that these matters should be settled before the employees were required to report for work and be relieved of duty at that place, and they requested that an early conference date be set (DA pp. 188-189).

With respect to a formal Section 6 notice under the Railway Labor Act, the labor representatives, through their attorney, declared at the trial in the District Court:

> ". . . we don't claim we have served any document marked Section 6 notice on anyone." (Brief and Appendix of Plaintiff-Appellee in United States Court of Appeals, filed herein, at page 51.)

Conferences were held between the general chairmen and the carrier's officers on June 19, 1963, on July 18, 1963, on July 23, 1963, and on July 24, 1963 (DA pp. 127-133). The parties were in substantial agreement regarding the physical facilities needed by the employees at the Hump Yard (DA pp. 126-127, 137), but on the subject of transportation between the Hump Yard and East St. Louis for the away-from-home crews, the Illinois Central refused the request of the employees (DA p. 127).

Further, the Illinois Central refused the request of the representatives of the employees for a written agreement (DA pp. 122-124), and declared that ". . . the Illinois Central will not be bound by any written agreement covering any facilities at this point" (DA p. 142).

By July 24, 1963, the general chairmen had become convinced that the Illinois Central would change the tie-up point from Sixth Street to the Hump Yard on July 25, 1963, and that it intended to leave the away-from-home crews in the Hump Yard without means of transportation to and from East St. Louis (DA pp. 131, 133, 135, 139, 142, 145-146). Accordingly, the general chairmen resolved to institute a strike at 12:01 P. M. on July 25, and a statement of their intention was immediately sent to the National Mediation Board (DA pp. 152, 153).

Late on July 24, 1963, the Illinois Central filed a complaint in the District Court at Chicago to enjoin the threatened strike (DA pp. 4-23, 26). The basis for Federal jurisdiction was alleged to be the Judicial Code (28 U. S. C. §§ 1331 and 1337), the Railway Labor Act (45 U. S. C. §§ 151, *et seq.*), the Interstate Commerce Act (45 U. S. C. §§ 1, *et seq.*), "and other statutes of the United States." The amount involved in the controversy was said to exceed the sum of $10,000.00, exclusive of interest and costs (DA p. 5).

On July 24, 1963, the Illinois Central obtained a temporary restraining order which enjoined the defendant Brotherhoods and the employees represented by them from carrying out the strike scheduled to begin on July 25, 1963 (DA pp. 24-26).

The Illinois Central submitted what it alleged to be the dispute to the National Railroad Adjustment Board for adjudication, where it is now pending (DA pp. 169-211, 234).

The trial in the District Court combined a hearing on a preliminary injunction and a hearing on the merits of the complaint. On November 14, 1963, the District Court entered a decree permanently enjoining the defendants from striking (DA pp. 232-236; Appendix B, *infra*, pp. 28-32).

On June 22, 1964, the United States Court of Appeals for the Seventh Circuit affirmed the District Court (Appendix A, *infra*, pp. 19-27).

REASONS FOR GRANTING THE WRIT.

1. Railway labor disputes such as that involved here, created by management decisions to make operational changes which increase efficiency at the expense of employee working conditions in areas not covered by collective agreements, pose a problem of crescent importance in the railroad world as the industry moves more rapidly toward modernization of equipment and facilities. Certain important questions concerning the application and operation of the Railway Labor Act in the handling of such disputes have not been but should be resolved by this Court.

2. This Court has not decided, but should decide, whether such disputes:

(a) Should be made the subject of prompt and inten-

sive collective bargaining looking toward a negotiated settlement under Section 2, First, of the Railway Labor Act without the necessity of formal exchanges of demands and counter-demands under Section 6 of the Railway Labor Act, or

(b) Should be handled as if they were changes in working conditions "as embodied in agreements" under Section 2, Seventh, of the Railway Labor Act, requiring formal notice under Section 6 of the Act, or

(c) Should, in the absence of a formal Section 6 notice, be treated as if they were disputes involving interpretation of existing agreements and thus referable to the National Railroad Adjustment Board for decision under Section 3, First (i) of the Railway Labor Act.

3. Serious confusion has arisen, of which this case is a striking example, concerning the teaching of this Court's decision in *Elgin, Joliet & Eastern* v. *Burley,* 325 U. S. 711, as to the true meaning and practical application of the distinction between "major" and "minor" disputes under the Railway Labor Act. The decision of the Court of Appeals sought to be reviewed here holds, in stated reliance on *Burley,* that a dispute over working conditions in a new situation admittedly not covered by existing agreements is nevertheless a "minor" dispute referable to the Adjustment Board in the absence of a Section 6 notice to add a new contract provision.

4. The decision sought to be reviewed demonstrates the urgent need for clarification by this Court of the duties of carriers and their employees, under Section 2, First, of the Railway Labor Act, to exert every reasonable effort to deal effectively with the substance and not merely the form of disputes as they arise, and to seek to make settlement

agreements rather than seek to avoid making them. This Court has not decided, but should decide, in railway disputes such as that involved here, whether the refusal of the carrier to consider entering into a *written* agreement on any terms covering new working conditions under the circumstances involved in this case affects the right of the carrier to an anti-strike injunction.

ARGUMENT.

I.

QUESTIONS AS TO THE PROPER HANDLING UNDER THE RAILWAY LABOR ACT OF DISPUTES SUCH AS THOSE INVOLVED HERE ARE IMPORTANT AND SHOULD BE SETTLED BY THIS COURT.

Disputes such as that involved here are common occurrences on railroads and will no doubt increase in frequency as carriers step up the pace of modernization programs. Operational changes which adversely affect working conditions will inevitably cause discontent among employees, who may in some instances wish to strike if they consider the new conditions intolerable.

On the other hand, carriers are understandably loath to make concessions concerning working conditions which will tend to cancel out some part of the cost savings which may have prompted the operational change. The question posed by this case is not, of course, what the new working conditions should be, but how the dispute over them should be handled under the Railway Labor Act. As this Court said in *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, at 6:

> "So far as the [Railway Labor] Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for."

(a) The "Letter Agreement" Method.

One method of handling such a dispute is that which was unsuccessfully undertaken by the unions here. They simply wrote joint letters to the carrier describing the working conditions they wanted and requesting "proper negotia-

tions'' looking toward an agreed settlement (DA, pp. 147-148; 212-213). When the carrier refused, after many conferences and letter exchanges, to provide transportation from the new tie-up point to East St. Louis and refused to consider making a settlement in writing on any terms, the employees decided to strike (DA pp. 152-153). The employees' appeal to the National Mediation Board to intervene in the dispute was declined (DA pp. 159-160).

The Court of Appeals has held that the settlement method pursued by the employees was improper because no notice designated as a Section 6 notice under the Railway Labor Act was served, the letters from the unions having made no express reference to Section 6, wherefore no ''foundation for negotiations'' had been laid (Appendix A, *infra*, p. 23).

This holding pointedly raises important questions as to the meaning of Section 2, First, of the Railway Labor Act, imposing duties on carriers and employees to ''exert every reasonable effort to make and maintain agreements'' concerning working conditions, and ''to settle all disputes, whether arising out of the application of such agreements or otherwise'' in order to avoid any interruptions to commerce.

Bearing in mind that Section 2, First, makes no reference whatever to any written notice, the cardinal question here is whether, as to working conditions not covered by an existing agreement, a carrier is free to exert only a limited effort toward making an agreement until a ''foundation for negotiations'' is first received from employees in the form of a notice designated as a Section 6 notice under the Railway Labor Act. If a carrier is so excused unless and until it receives a formal Section 6 notice, then an infirm foundation lies beneath literally thousands of ''letter agreements'' which have been negotiated by the carriers and

unions *without Section 6 notices*, to cover newly arisen situations. The Illinois Central, in connection with changes of tie-up point, has made written agreements with employees pertaining to the changed operations. The record does not show that these agreements were preceded by formal Section 6 notices (DA pp. 118-120).

Secondly, the question arises whether the effort "to make" agreements, which Section 2, First, seems to require, is an effort which must be exerted *only* by employees in cases of worsened working conditions created by management decisions to bring about operational changes. If so, then the carrier in this case was within its rights when it declared that its "entire object has been to avoid having to make an agreement" (DA p. 227).

And finally, the question is raised, in a case such as this, whether the duty under Section 2, First, to exert every reasonable effort "to settle all disputes" concerning working conditions, whether arising under agreement "or otherwise" applies *only* to employees so far as negotiation is concerned. If so, the carrier in this case had assumed the correct posture when it declared "we should not negotiate: we should inform" (DA p. 227).

In the *Burley* case the closest thing to an answer to these questions appears in a footnote, 325 U. S. at 724, footnote 18:

> "The obligation [to negotiate] is not partial. In plain terms the duty is laid on carrier and employees alike, together with their representatives; and in equally plain terms it applies to all disputes covered by the Act, whether major or minor."

The decision sought to be reviewed, in holding that service of a formal Section 6 notice is an absolute prerequisite to negotiation, clearly demonstrates the need for a restatement by this Court of the true meaning of Section 2, First.

(b) The "Section 6 Notice" Method.

A second possible method of handling such a dispute would be to treat it as a formal change in working conditions "as embodied in agreements" as that term is used in Section 2, Seventh, of the Railway Labor Act, requiring service of a formal notice under Section 6 of the proposed change (45 U. S. C. § 152, Seventh, § 156).

The decision of the Court of Appeals indicates that the dispute here might have been so treated, but that in view of the absence of a Section 6 notice, the dispute over the matter remained a minor dispute (Appendix A, *infra*, p. 23). The Court of Appeals relies on this Court's decision in the *Burley* case as supporting such a conclusion (Appendix A, *infra*, pp. 23-24). This presents the basic question whether the distinction drawn in *Burley* between "major" and "minor" disputes could conceivably be authority for the amazing proposition that major disputes grow from minor disputes, like mighty oaks from little acorns, and that the true categorical test as to a given dispute is to determine whether a Section 6 notice has been served.

If that was the intended rationale of *Burley*, the decision should be rewritten. As it is, *Burley* contains no discussion of Section 6 notices in any connection, much less a holding that a Section 6 notice is the *sine qua non* of a major dispute.

In *Burley*, the distinguishing features between major and minor disputes seem to be based on substance rather than form, on the actual nature of the disputes rather than the labels placed on them by the parties. Disputes over interpretation or application of existing agreements are classified as minor disputes, and if not settled by negotiation are referable to the National Railroad Adjustment Board for decision. Disputes over the making of new contracts or the

changing of old contracts are classified as major disputes, to be settled by negotiation, mediation, voluntary arbitration, or Presidential Emergency Board action.

If it is assumed that the *Burley* case requires all railway labor disputes to be classified as major or minor, it would seem that the dispute involved in this case is obviously a major dispute, concerning as it does the failure of the carrier to enter into a satisfactory agreement governing working conditions. Nevertheless, *Burley* does not answer the questions concerning the possible application of Section 6.

Section 2, Seventh, and Section 6, by their terms, clearly refer to *contract* changes which affect working conditions, as distinguished from changes in working conditions about which contracts are silent. Section 2, Seventh, refers to any change in working conditions "as embodied in agreements", and Section 6 requires written notice of "an intended change in agreements". Does such a "change" include the addition of a new rule to cover a new situation about which the existing agreement is silent? Further, must the written notice of intended change that is given under Section 6 *state* that it is given under Section 6 in order to have any legal effect?

Definitive answers to these questions will materially facilitate the proper handling of disputes in this difficult field of railway labor relations.

(c) The Adjustment Board Method.

As above noted, the Court of Appeals has held that in the absence of a Section 6 notice, the dispute here involved "remained a minor dispute", although "it involved a matter of working conditions omitted from the contract" (Appendix A, *infra*, p. 23). This apparent contradiction is evi-

dently based on language of this Court in the *Burley* case, wherein the discussion of minor disputes contains the following language:

> "The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation *or to an omitted case*". (325 U. S. 711, at 723) (Emphasis supplied by Court of Appeals, Appendix A, *infra*, p. 23.)

It thus appears that the Court of Appeals placed great reliance on the phrase "omitted case", appearing in the *Burley* opinion, as authority for the proposition that the controversy here was a minor dispute which should go to the Adjustment Board.

The Court of Appeals has evidently overlooked the well-established rule that the Adjustment Board can never do more than interpret or apply existing contract provisions; it can never make new ones, or require the parties to do so. As this Court noted in *Burley* (325 U. S. at 747, footnote 44), the Board "has no power to render a decision requiring the carrier or the union to make a new agreement".

The question now presented, in view of the construction of the phrase "omitted case" adopted by the Court of Appeals, is whether the Adjustment Board does have the power, in the situation presented here, to supply a new rule, and it is submitted that this Court should now consider whether its decision in *Burley* has been misapplied.

CONCLUSION.

The petitioners submit that the important and difficult questions presented in the decision sought to be reviewed, particularly because of its stated broad reliance on the authority of this Court's decision in the *Burley* case, fully warrant the granting of a writ of certiorari.

Respectfully submitted,

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September 15, 1964.

Appendix

APPENDIX A.

Opinion and Judgment of the United States Court of Appeals for the Seventh Circuit.

IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 14486. September Term, 1963—April Session, 1964

ILLINOIS CENTRAL RAILROAD CO., a corporation, *Plaintiff-Appellee*, v. BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, *et al.*, *Defendants-Appellants*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

June 22, 1964

Before SCHNACKENBERG, KNOCH and CASTLE, *Circuit Judges*.

CASTLE, *Circuit Judge*. The plaintiff-appellee, Illinois Central Railroad Company, instituted this action in the District Court against defendants-appellants,[1] the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Locomotive Engineers, the Order of Railway Conductors and Brakemen, and individuals in the employ of

1. The Brotherhood of Railroad Trainmen and plaintiff's employees represented by it are also defendants but did not join in the appeal.

plaintiff who are members of or are represented by said organizations, seeking injunctive relief to prevent a threatened strike against the plaintiff railroad scheduled to commence on July 25, 1963. The court issued a temporary restraining order, and following a combined hearing on the issuance of a preliminary injunction and upon the merits, made and entered findings of fact and conclusions of law upon which it based a judgment order or decree permanently enjoining the defendants from striking in connection with the labor dispute involved.

The record discloses that the dispute which culminated in the threatened strike action concerned a request by the unions that the railroad furnish transportation into the East St. Louis, Illinois, business district for away-from-home freight crews required to lay-over at a newly designated tie-up point some three miles distant from the previous tie-up point located near Sixth Street in East St. Louis. Bus transportation was available within about a block from the Sixth Street tie-up point. It was about a mile away from the new tie-up point and the intervening area was a deteriorating residential district. Some 75 employees reported for work and were relieved of duty at the East St. Louis Terminal tie-up point. An average of 17 men per day who do not have the terminal as their home base are required to lay-over at the tie-up point before returning to their home terminal. These away-from-home crewmen had utilized bus transportation, at their own expense, to avail themselves of eating, sleeping, and recreational facilities in East St. Louis.

The existing collective bargaining agreements between the unions and the railroad contained no provision concerning or limiting the right of the railroad to make changes in the location of tie-up points or concerning facilities to be furnished by the railroad at such points.

On March 1, 1962, the local chairmen of the defendant

unions were called in by the division superintendent of the railroad and advised of the contemplated change in the tie-up point. The change was being made as a part of an improvement and modernization program involving the revamping and rehabilitation of the freight terminal facilities at the "Hump Yard", where the railroad's primary yard operations at the terminal had been carried on. The Hump Yard was to be the new tie-up point. On December 7, 1962, the local chairmen wrote a letter to the division superintendent, Mr. H. R. Koonce, stating that the employees involved requested that before the change was made effective five specifically designated facilities be made available at the Hump Yard tie-up point. This request called for the railroad to provide eating, sleeping, bath and toilet, locker room, and lounge room facilities; and regular inspection and maintenance thereof. Koonce replied, on January 4, 1963, that the matter would be looked into, and on May 23, 1963, advised that adequate facilities were being constructed at the yard and "it is expected that they will be completed prior to the moving date sometime in early July". On May 24, 1963, the local chairmen first made known that they "believe[d] the men should have access to transportation from the yard to downtown East St. Louis" pointing out that at the railroad's Freeport, Illinois, terminal transportation from the yard to the city was furnished at the expense of the railroad. At this point the unions' general chairmen entered the picture and on May 29, 1963, addressed a communication to the railroad's manager of personnel, Mr. Walter J. Cassin, stating that "what facilities or what provisions are being made" involved "working conditions, and must be settled before any change is made in the tie-up point". An early conference to discuss the subject was requested. Conferences followed between the general chairmen and the railroad on June 19, July 18, 23 and 24, 1963. The parties were in substantial agreement concerning the physical facilities

to be furnished and the physical facilities requested were furnished. The facilities at the Hump Yard tie-up point were put into service July 24, 1963. No agreement was reached concerning the furnishing of transportation at railroad expense and the general chairmen resolved to institute a strike commencing on July 25, 1963.

The District Court found, among other things, that there are no collective bargaining agreements between the parties which require the railroad to furnish any of the facilities or services requested by the defendants; that no Section 6[2] notice was served in connection with the dispute; that representatives of the railroad met with representatives of the defendants on numerous occasions and in a good faith effort attempted to resolve the dispute, and the railroad acceded to most of the requests made upon it except the one for payment of mileage between the new tie-up point and the East St. Louis business district; and that the dispute has been submitted by the railroad to, and is pending before, the National Railroad Adjustment Board for adjudication.[3] The court concluded that the dispute is a "minor" dispute and that a strike or work stoppage would be unlawful and would cause irreparable harm, not only to the plaintiff but also to the public; and that an injunction as prayed for should issue.

On the record before us we perceive no error in the District Court's findings or conclusions. The defendants concede that the right of the railroad to change the tie-up point is not forbidden or restricted by the terms of any existing agreement between the railroad and the defendants. And they conceded, before the District Court, that no Section 6 notice was served concerning the matter in dispute.

---

2. Section 6 of the Railway Labor Act (45 U. S. C. A. § 156).

3. The National Mediation Board refused to take jurisdiction on the grounds that the dispute "is one primarily involving interpretation or application of existing agreements" and that "no Section 6 notices have been served".

Under the circumstances here involved the change in the tie-up point did affect "working conditions" but it involved a matter of working conditions omitted from the contracts and in the absence of a Section 6 notice as a foundation for negotiations to add a provision or provisions to the existing collective bargaining agreements concerning the facilities to be furnished at, or transportation to be furnished from, tie-up points, the dispute over the matter remained a minor dispute. *Elgin, J. & E. R. Co. v. Burley,* 325 U. S. 711, 722-724, points out, with respect to the Railway Labor Act, that:

> "The statute first marks the distinction in § 2, which states as among the Act's five general purposes: '(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.' The two sorts of dispute are sharply distinguished, though there are points of common treatment. Nevertheless, it is clear from the Act itself, from the history of railway labor disputes and from the legislative history of the various statutes which have dealt with them, that Congress has drawn major lines of difference between the two classes of controversy.
>
> The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise *where there is no such agreement or where it is sought to change the terms of one,* and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.
>
> The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, *a situation in which no effort is made to bring about a formal change in terms* or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation *or to an omitted case.*

In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement, e.g., claims on account of personal injuries. In either case the claim is to rights accrued, not merely to have new ones created for the future.

In general the difference is between what are regarded traditionally as the major and the minor disputes of the railway labor world. The former present the large issues about which strikes ordinarily arise with the consequent interruptions of traffic the Act sought to avoid. Because they more often involve those consequences and because they seek to create rather than to enforce contractual rights, they have been left for settlement entirely to the processes of noncompulsory adjustment.

The so-called minor disputes, on the other hand, involving grievances, affect the smaller differences which inevitably appear in the carrying out of major agreements and policies or *arise incidentally in the course of an employment. They represent specific maladjustments of a detailed or individual quality.* They seldom produce strikes, though in exaggerated instances they may do so. Because of their comparatively minor character and the general improbability of their causing interruption of peaceful relations and of traffic, the 1934 Act sets them apart from the major disputes and provides for very different treatment." (Emphasis supplied.)

And, as this Court pointed out in *Hilbert* v. *Pennsylvania R. R. Co.*, 7 Cir., 290 F. 2d 881, 883:

> " 'Major disputes' encompass those differences arising out of proposals for new contracts or of changes in existing contractual or legal obligations and relations. They arise where there is no collective bargaining agreement or where it is sought to change the terms of one. In such a case, the issue cannot be resolved by reference to an existing agreement.
>
> 'Minor disputes', on the other hand, are grievances or other differences arising out of the application or interpretation of an existing collective bargaining agreement. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation. See *Elgin, J. & E.*

Ry. Co. v. *Burley*, 325 U. S. 711, 722, 65 S. Ct. 1282, 89 L. Ed. 1886.

The Act marks out two distinct routes for settlement of the two classes of disputes. As to both, the Act requires the parties enter into negotiations as the first step towards settlement of the controversy (§ 2, Second, 45 U. S. C. A. § 152, Second). Beyond this initial stage the procedures diverge. Major disputes go first to mediation (§ 5, First, 45 U. S. C. A. § 155, First); if that fails, to acceptance or rejection of arbitration (§ 5, First, 45 U. S. C. A. § 155, First); and finally to possible presidential intervention (§ 10, 45 U. S. C. A. § 160). If all this fails, compulsory processes are at an end, and either party may resort to self help. No authority is empowered to decide the dispute unless the parties agree to arbitration.

In minor disputes, if negotiation fails, either party may submit the controversy to the National Railroad Adjustment Board (§ 3, First (i), 45 U. S. C. A. § 153, First (i)). The awards of the Board are final and binding on the parties (§ 3, First (m), 45 U. S. C. A. § 153, First (m)). This is a form of compulsory arbitration.

Generally, the Norris-LaGuardia Act prohibits the issuance of an injunction in cases involving any 'labor dispute' (29 U. S. C. A. § 104). In *Order of Railroad Telegraphers* v. *Chicago & N. W. Ry. Co.*, 362 U. S. 330, 80 S. Ct. 761, 4 L. Ed. 2d 774, the Court held the Norris-LaGuardia Act prevented the issuance of an injunction to enjoin a strike in a railway labor case involving a major dispute. However, in *Brotherhood of Railroad Trainmen* v. *Chicago River & Ind. R. R. Co.*, 353 U. S. 30, 77 S. Ct. 635, 1 L. Ed. 2d 622, a case involving a minor dispute, the Court stated that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. The Court said, 353 U. S. at page 40, 77 S. Ct. at page 640: 'There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved.' "

In this Court the defendants suggest that the local chairmens' letters of December 7, 1962 and May 24, 1963, to the division superintendent constitute substantial compliance with the notice requirements of Section 6, and in

all events, any technical defects therein were overcome by the general chairmens' letter of May 29, 1963 to the railroad's manager of personnel. Not only is this contrary to the concession defendants made in the trial court (Cf. *Norfolk & P. B. L. R. Co.* v. *Brotherhood of Railroad Trainmen*, 4 Cir., 248 F. 2d 34, 45-46) but from our examination of the letters relied upon we find no merit in the contention the defendants now make.

Although the first two letters suggested "proper negotiations" and "further consideration" concerning the facilities to be furnished and the May 29th letter requested an "early conference date" to discuss the subject none of the letters made any express reference to Section 6 or suggest any intention to propose a change in or addition to the existing contracts.

We conclude that the District Court did not err in its determination that the dispute was a "minor dispute" and that under the circumstances presented the railroad was entitled to the injunctive relief awarded. The judgment order of the District Court is affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS,
For the Seventh Circuit,
Chicago 10, Illinois.

Monday, June 22, 1964.

Before

Hon. Elmer J. Schnackenberg, Circuit Judge,
Hon. Win G. Knoch, Circuit Judge,
Hon. Latham Castle, Circuit Judge.

Illinois Central Railroad Co., a corporation,
Plaintiff-Appellee,
No. 14486 *vs.*
Brotherhood of Locomotive Firemen and Enginemen, *et al.*,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment order of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the Opinion of this Court filed this day.

APPENDIX B.

Final Order of the District Court.

UNITED STATES DISTRICT COURT.
* * (Caption—63 C-1330) * *

This matter came on to be heard on the verified complaint, defendants' answers and plaintiff's replies, and the court having heard the evidence and the arguments of counsel, and having fully considered the pleadings, the briefs and exhibits submitted, finds the facts and states the conclusions of law thereon as follows:

FINDINGS OF FACT.

1. Plaintiff, Illinois Central Railroad Company, is an Illinois corporation and is a common carrier engaged in interstate commerce by railroad and a "carrier" within the meaning of that term as defined by the Railway Labor Act.

2. Defendants, Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Locomotive Engineers and Order of Railway Conductors and Brakemen are the certified bargaining representatives under the Railway Labor Act of the so-called "operating crafts" employed by plaintiff. The employees represented by said organizations are so numerous as to make it impracticable to bring them before the court. The defendants fairly and adequately represent the classes of Illinois Central Railroad Company employees represented by said organizations.

3. This court has jurisdiction of this cause under the laws of the United States, including the Railway Labor Act, 45 U. S. C. A. § 151, et seq.

4. On July 25, 1963, plaintiff changed the point at its St. Louis-East St. Louis terminal at which freight crews report for work and are relieved from work. Under the collective bargaining contracts in existence between plaintiff and defendants, plaintiff had the admitted right to effect this change.

5. Prior to the time the change was made, local chairmen of each of the four defendant organizations requested plaintiff to provide certain facilities and services at, from, and to the new "tie-up" point at the time the change was actually made.

6. There are no collective bargaining contracts between the parties which require plaintiff to furnish any of the facilities or services requested by the defendants.

7. Neither defendants nor plaintiff served upon the other the notice required by Section 6 of the Railway Labor Act, 45 U. S. C. A. § 156, relative to the dispute over facilities and services at the St. Louis-East St. Louis terminal. Had the dispute here been a major one, as urged by defendants, it would have been incumbent upon them, under the Railway Labor Act, to serve a Section 6 notice.

8. Plaintiff's Exhibit 50 is a copy of a letter dated August 15, 1963, signed by E. C. Thompson, Executive Secretary of the National Mediation Board, addressed to Mr. L. J. Wagner, President, Order of Railway Conductors & Brakemen, and to Mr. Charles Luna, President, Brotherhood of Railroad Trainmen, reading in part as follows:

> "Reference is made to Mr. Wagner's letter of July 30th and Mr. Luna's letter of July 31st, 1963 on the subject of strike date set by the organizations for July 25, 1963 on the Illinois Central Railroad in connection with

the action of the carrier in changing the reporting point for crews at East St. Louis Terminal. . . . The entire file was placed before the Board in executive session on August 13, 1963, and after a review of all the information contained therein the Board is of the opinion this dispute is one primarily involving interpretation or application of existing agreements. . . . Under the above circumstances the Board is unable to take jurisdiction of this matter as a dispute subject to mediation under Sections 5 and 6 of the Railway Labor Act, particularly in view of the fact no Section 6 notices have been served by either party on the other in connection with this matter."

9. Representatives of the plaintiff met with representatives of the defendants on numerous occasions and in a good faith effort attempted to resolve the dispute.

10. The plaintiff has made a good faith effort to resolve the dispute, and in fact has acceded to most of the requests made upon it by the defendants except the one for the payment of mileage between the new tie-up point and the East St. Louis business district. A tie-up point is the exact place at which employees in train service go off duty and report for duty.

11. The dispute involved here has been submitted by plaintiff to, and is pending before, the National Railroad Adjustment Board for adjudication.

12. Defendants have either called or threatened to call a strike against plaintiff to enforce their demands for facilities and services, and/or agreement relative thereto, at the terminal.

13. A strike by defendants against the plaintiff would result in irreparable damage to plaintiff and to the public.

CONCLUSIONS OF LAW.

1. This court has jurisdiction of the subject matter hereof and of the parties hereto.

2. Defendants adequately represent their classes, namely: Employees of Illinois Central Railroad Company represented by the Labor Organization defendants, and this action is a valid class action.

3. Plaintiff has fulfilled every obligation imposed upon it by the Railway Labor Act and its contracts with the defendant labor organizations.

4. The dispute between the parties is a "minor" dispute within the Railway Labor Act.

5. Defendants have not pursued their remedies provided under the Railway Labor Act to seek a new agreement.

6. A strike or work stoppage by defendants would be unlawful and would cause irreparable harm, not only to the plaintiff but also to the public.

7. Plaintiff has no adequate remedy at law.

8. Under the facts presented in this case, the Norris-LaGuardia Act, 29 U. S. C. A. § 101, et seq., does not bar the injunctive relief sought by the plaintiff.

9. An injunction as prayed for by plaintiff should issue.

Enter:

J. S. PERRY,
Judge.

Dated: Chicago, Illinois, November 14, 1963.

UNITED STATES DISTRICT COURT.

(Caption—63-C-1330)

Final Decree.

This matter coming on to be heard on the plaintiff's application for a permanent injunction and the court having considered the pleadings, the testimony, the documentary evidence, briefs and oral argument, and having made findings of fact and conclusions of law:

Now, Therefore, It Is Ordered and Decreed:

That the defendants, Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Locomotive Engineers, Order of Railway Conductors and Brakemen, the members thereof, and all persons in active concert or participation with them, are hereby enjoined from calling, encouraging, permitting or engaging in any strike or concerted work stoppage against plaintiff or picketing any of the premises on which plaintiff conducts its operations in connection with the dispute between plaintiff and defendants by reason of defendants' demands for facilities, services and/or agreements relative thereto at plaintiff's St. Louis-East St. Louis terminal.

Enter:

J. S. Perry,
Judge.

Dated: Chicago, Illinois,
November 14, 1963.

APPENDIX C.

Statute Involved.

The Railway Labor Act (45 U. S. C. § 151, *et seq.*) and sections as follows:

Section 2, First (45 U. S. C. § 152, First):

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2, Second (45 U. S. C. § 152, Second):

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Section 2, Seventh (45 U. S. C. § 152, Seventh):

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title."

Section 3, First (i) (45 U. S. C. § 153, First (i)):

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application

of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Section 6, (45 U. S. C. § 156):

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board. May 20, 1926, c. 347, § 6, 44 Stat. 582; June 21, 1934, c. 691, § 6, 48 Stat. 1197."

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FILED
OCT 14 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 508

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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October 14, 1964.

La Salle Street Press—Chicago 10

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Petitioners,

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

PRELIMINARY STATEMENT

This case presents no issue of national importance, but rather relates only to a very small dispute which arose in the course of everyday operation of respondent's railroad. The District Court heard the evidence and found that the petitioners had not proceeded in conformity with the clearly delineated statutory steps which are prerequisite to a strike in the railroad industry. The findings of fact and conclusions of law of the District Court were unanimously affirmed by the Court of Appeals for the 7th Circuit. The decision of the Court of Appeals is in conformity with deci-

sions of other Courts of Appeals in similar cases. The petition for writ of certiorari presented to this court is, in fact, a plea that this court alter the established interpretation of the Railway Labor Act as already enunciated by this court, and as uniformly applied by the Courts of Appeals.

QUESTION PRESENTED

The only question really presented by this appeal is whether there should be established a third category of disputes within the purview of the Railway Labor Act, 45 U.S.C.A. § 151 et seq., in which the law of the jungle is to replace the orderly procedures heretofore applied under the classifications "major" and "minor" disputes, creation of which third class of disputes would inevitably result in repeated paralyzing strikes in an industry recognized as being vital to the public interest.

STATEMENT OF THE CASE

The brief of petitioners contains, under a number of the headings thereof, a presentation of petitioners' interpretation of the facts. Rather than attempt to correct the various distortions and misstatements, we respectfully refer the court to the opinion of the Court of Appeals for the 7th Circuit which is included in Appendix A to the petitioners' brief herein, beginning at page 19, which sets forth the facts of the case. Basically, although petitioners changed their position several times in the course of the dispute, the record discloses that the differences between the parties were handled informally, no notice of the nature required to create a "major" dispute having ever been served by either party. This is the basis of the holding below that a strike would be unlawful and should therefore be enjoined.

ARGUMENT

I.

This Case Does Not Present A Question Which Should Be Reviewed By This Court.

Rule 19 of the revised rules of the Supreme Court of the United States sets forth the considerations concerning the review on certiorari, in pertinent part as follows:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) * * *
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.
>
> 2. * * *".

The court will note that the petition herein does not attempt to present a claim that the decision below is in conflict with the decision of another Court of Appeals, or that the decision of the court below is in conflict with one or more decisions of this court. As a matter of fact, none of the

stated causes for granting of review are present in this case. As we indicate hereafter, the decision of this court in the case of *Elgin, J. & E. R. Co.* v. *Burley,* 325 U.S. 711, clearly recognizes that the Railway Labor Act, 45 U.S.C.A. § 151, et seq., established two types of disputes in the railroad industry, these being commonly referred to as "major" disputes, or "Section 6" disputes, which may ultimately lead to a strike, and all other disputes, classified as "minor" disputes, for which the remedy of a strike is not available.

Mr. Justice Frankfurter, in the course of his dissent to *Ferguson* v. *Moore-McCormack Lines,* 352 U.S. 521, beginning at 524, has very ably and exhaustively reviewed the considerations bearing upon the granting or denial of the writ of certiorari in this court. This court is well aware of the criteria applicable to consideration of petitions for writs of certiorari, and accordingly we will not elaborate further on this subject. We do earnestly submit that this case presents nothing but a request that this court read into the statute something that is not there, which would in application work to the public detriment by making practically every dispute the cause for an immediate strike. If the contention of petitioners is that the courts below have made incorrect factual findings from the evidence, which may account for the emphasis on facts rather than law in the brief of petitioners, then in such case we submit that review of the facts is not a function of this court, faced as it is with its heavy docket of cases involving grave constitutional questions and matters of national importance.

Four federal court judges have considered this case, and have unanimously held against the contentions of petitioners.

Accordingly, there being no valid cause for review of this case, we respectfully submit that the petition for writ of certiorari should be denied.

II.

The Judgment Entered Below Is Proper.

Since 1945, in its decision in *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, this court has held that there are two classes of disputes encompassing all disputes within the scope of the Railway Labor Act. In that case, this court said (pp. 722-724):

> "The statute first marks the distinction in § 2, which states as among the Act's five general purposes: '(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.' The two sorts of dispute are sharply distinguished, though there are points of common treatment. Nevertheless, it is clear from the Act itself, from the history of railway labor disputes and from the legislative history of the various statutes which have dealt with them, that Congress has drawn major lines of difference between the two classes of controversy.
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> "The first relates to disputes over the formation of collective agreements or efforts to secure them. *They arise where there is no such agreement or where it is sought to change the terms of one,* and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.
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> "The second class, * * * The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation *or to an omitted case.* In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement * * *.

> *"In general the difference is between what are regarded traditionally as the major and the minor disputes of the railway labor world.* The former present the large issues about which strikes ordinarily arise with the consequent interruptions of traffic the Act sought to avoid. * * *
>
> "The so-called minor disputes, on the other hand, involving grievances, affect the smaller differences which inevitably appear in the carrying out of major agreements and policies or arise incidentally in the course of an employment. They represent specific maladjustments of a detailed or individual quality. *They seldom produce strikes, though in exaggerated instances they may do so.* Because of their comparatively minor character and the general improbability of their causing interruption of peaceful relations and of traffic, the 1934 Act sets them apart from the major disputes and provides for very different treatment." (Emphasis supplied)

The *Burley* case has stood as the landmark in defining the tests to be applied in the categorization of railroad labor disputes. No contrary decision of this court has appeared, and no inconsistencies in the decisions of the Courts of Appeals have developed. Indeed, the lower courts have consistently applied the doctrine of the *Burley* case on repeated occasions. See *Rutland Railway Corp.* v. *Brotherhood of Locomotive Eng.*, 2 Cir., 307 F.2d, 21, 30-31, certiorari denied 372 U.S. 954; *Norfolk & P.B.L. R. Co.* v. *Brotherhood of Rail. Train.*, 4 Cir., 248 F.2d 34, 39-40, certiorari denied 355 U.S. 914; *St. Louis S.F. & T. Ry. Co.* v. *Railroad Yardmasters of America*, 5 Cir., 328 F.2d 749, 752-753; and *Hilbert* v. *Pennsylvania RR Co.*, 7 Cir., 290 F.2d 881, certiorari denied 368 U.S. 900.

In the case at bar, the petitioners did not follow the procedure specified for seeking a new agreement by serving a formal notice as required by Section 6 of the Railway

Labor Act. Although the initial position of the petitioners was that the proposed changes could not be made without the railroad first securing an agreement, they later conceded the respondent railroad was doing what it had an admitted right to do. The petitioners now say that they desire that a new agreement be made. This position, however, was made for the first time when the case was before the Court of Appeals, which court, in its opinion, commented upon the tardiness of the change of position. In this case, as in the case of *Norfolk & P.B.L. R. Co.* v. *Brotherhood of Rail. Train.*, 4 Cir., 248 F.2d 34, the unions, for reasons of their own, chose not to follow the procedures established by the Railway Labor Act for the handling of "major" disputes. In both instances the unions eventually admitted that the railroad had the right to effect the changes involved.

It is earnestly submitted that the Courts of Appeals have correctly followed the guidelines of this court in interpreting the Railway Labor Act, and that there is nothing to indicate that a contrary interpretation should be made. The Railway Labor Act, as correctly interpreted in the *Burley* case, and the many cases following it, provides a clear dichotomy of classification of railroad labor disputes, which is easily understood by all involved and which looks toward an orderly handling of disputes. A dispute of such serious nature that a strike may result is clearly identified as such by the service of a formal notice as required by Section 6. The other disputes, considered less serious in nature, are not allowed to result in a crippling strike. To adopt the contention of petitioners in this case that there is another class of situation, in which a strike can result although the Section 6, or "major" disputes procedure has not been followed, would desecrate the noble purpose of the Railway Labor Act to promote certainty in this vital industry and avoid a rash of unexpected work stoppages. The purpose

of the Congress is clearly reflected in the *Burley* decision.

The *Burley* case recognizes two clearly defined categories of dispute, which is necessitated by the plain language of the Railway Labor Act. This case presents a correct application of the holding of this court in *Burley*, and the judgment below should therefore be affirmed.

Conclusion

This court has interpreted the Railway Labor Act correctly, and the various courts of appeals have been uniform in their application of this court's holding. This case presents a situation wherein the established, orderly, and well-known procedures for creating what is commonly described as a "major" dispute were not followed by petitioners. Accordingly, the holdings of the courts below that the right to strike in a situation coming within the purview of the Railway Labor Act is contingent upon exhausting the procedures therein set forth, beginning with the written notice required by Section 6, are correct and should be affirmed in this court.

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October 14, 1964.

Certificate of Service

I certify one copy of the foregoing respondent's brief in opposition to writ of certiorari has been air-mailed on the 13th day of October, 1964, to each of petitioner's attorneys: Harold C. Heiss, Russell B. Day, Keith Building, Cleveland 15, Ohio, Harold N. McLaughlin, Union Commerce Building, Cleveland 14, Ohio, V. C. Shuttleworth, Harry Wilmarth, Merchants National Bank Building, Cedar Rapids, Iowa, Burke Williamson, Jack A. Williamson, 39 South La Salle Street, Chicago 3, Illinois.

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